

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ZACKERY D. BILLINGS,

Defendant.

ORDER
15-CR-50(LJV)(JJM)-4

Along with four co-defendants, defendant Zackery Billings is charged with conspiracy to manufacture, to possess with intent to distribute, and to distribute 500 grams or more of a mixture and substance containing methamphetamine. See Docket Item 1. The defendant did not object to United States Magistrate Judge Jeremiah J. McCarthy's Report and Recommendation denying the defendant's motion for an extension of time to file pretrial motions, and the time to object now has expired. For that reason, the defendant has waived his right to have the Report and Recommendation reviewed. See Fed. R. Crim. P. 59(b)(2) ("Failure to object in accordance with this rule waives a party's right to review."); see *also* Docket Item 138 at 4. Nevertheless, in its discretion this Court has reviewed the Report and Recommendation and now adopts it in its entirety.

In March 2015, United States District Court Judge Richard J. Arcara referred this case to Judge McCarthy for all pretrial matters, including those that a magistrate judge may hear and determine, pursuant to 28 U.S.C. § 636(b)(1)(A), and those that a magistrate judge may hear and thereafter file a report and recommendation, pursuant to

§ 636(b)(1)(B). See Text Order of Referral dated Mar. 17, 2015. The case was reassigned from Judge Arcara to the undersigned on November 12, 2015. See Docket Item 74.

On March 26, 2015, Judge McCarthy issued a Scheduling Order that set a deadline of June 22, 2015, for filing pretrial motions. See Docket Item 29. After granting two unopposed motions by the defendant for sixty-day extensions of time to file pretrial motions, Judge McCarthy issued a Second Amended Scheduling Order setting October 22, 2015, as the new deadline by which the parties must file pretrial motions. See Docket Items 56-57, 67-68. But the defendant did not file pretrial motions until December 8, 2015, and even then his filing did not request leave to file an untimely motion. See Docket Item 88.

On February 9, 2016, this Court adopted Judge McCarthy's Report and Recommendation (Docket Item 93), dated December 18, 2015, thereby denying the defendant's pretrial motions without prejudice to a renewed motion for an extension of time that demonstrated good cause for the untimely filing. See Docket Item 105. More than seven months later, the defendant filed the instant motion seeking an extension of time to file pretrial motions. See Docket Item 133. Shortly after the government filed a response opposing the relief sought, see Docket Item 135, Judge McCarthy issued a Report and Recommendation dated October 5, 2016, recommending that this Court deny the defendant's motion. See Docket Item 138. As noted above, the defendant did

not object to Judge McCarthy's Report and Recommendation, and the time to do so now has expired.

This Court has carefully reviewed Judge McCarthy's most recent Report and Recommendation (Docket Item 138). Based on that review, the absence of any timely objection to it, and the history of extensions and missed deadlines, this Court adopts the Report and Recommendation in its entirety. The defendant's Second Motion for Extension of Time to File (Docket Item 133) is DENIED.

IT IS SO ORDERED.

Dated: November 14, 2016
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE